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Summary record of the 2430th meeting
Held at Headquarters, New York, on Thursday, 15 March 2006, at 10 a.m.

Chairperson: Mr. Rivas Posada

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The meeting was called to order at 10.05 a.m.

Consideration of reports submitted by States parties under article 40 of the Covenant and of country situations (*continued*)

Fifth periodic report of Chile (*continued*) (CCPR/C/CHL/5; CCPR/C/CHL/Q/5 and Add.1)

1. *At the invitation of the Chairperson, the members of the delegation of Chile resumed places at the Committee table.*

2. **The Chairperson** invited the delegation to take up any points regarding questions 1-11 of the list of issues (CCPR/C/CHL/Q/5) addressed at the previous meeting.

3. **Mr. González** (Chile), responding to the question raised about the treatment in the penal process of persons with disabilities, said that that was one of the concerns covered by the proposed adjustments to the entrenched clauses in the Constitution. A bill was under preparation, to be submitted to Congress by the end of 2007, which would provide for special treatment for persons with mental disabilities. Psychiatric units would be established in penal institutions in each region in order to determine the possible culpability of persons brought before the courts and to ensure the necessary psychiatric and psychological care for the prison population.

4. **Ms. Brunaud** (Chile), taking up the question of gender equality, said that the preparation of a bill against discrimination was well advanced; it provided for prevention and punishment and for a special appeals procedure. A draft bill was also being drawn up on civil unions, to address the issue of same-sex couples. In addition, the Constitutional Act on Education would be amended to ensure non-discrimination between the sexes in education. As for the new National Human Rights Institute, it had been established with due regard for the Paris Principles. It was a corporate entity with legal personality and with its own assets. It was specifically concerned with the human rights situation in the country, in particular all aspects covered by international treaties ratified by Chile, and observed the principle of transparency in all its actions and recommendations. It was autonomous and subject to external control only in regard to its use of funds, on which it was required to report to the competent finance and budget committees. The seven elected members of its governing council were appointed for a six-year term and were elected by the deans of the schools of law, the President of the Republic, the two Chambers of Congress and senior officials in the field of human rights.

5. **The Chairperson** asked members whether they had any follow-up questions or remarks.

6. **Mr. O'Flaherty** said that he had taken note of the Government's strong will to correct problems, notably by way of legislation, and hoped that, in view of its correspondingly heavy legislative programme, the needs of the most vulnerable groups would not be consigned to the bottom of the list of priorities. With regard to the treatment of disabled persons, he called for a review of the procedures for involuntary incarceration and for the appointment of guardians in the light of international best standards recognized by the World Health Organization. He welcomed the steps taken to provide protection against discrimination for reasons of sexual orientation but stressed that such legislative action should be matched by public awareness and education programmes.

7. **Mr. Kälin** said that it would be useful to have copies of all the new legislation, in particular on terrorism. He also asked for information on specific procedural rules for the trial of persons charged with terrorist acts.

8. **Sir Nigel Rodley** requested an explanation as to why the National Commission on Political Prisoners and Torture could not identify the perpetrators of acts of torture and wondered if it was for the same reason that the National Commission on Truth and Reconciliation was only allowed to concern itself with victims. He asked whether he was right in understanding that there had not been a single prosecution in any of the 27,255 cases of torture identified by the Commission and whether the judicial proceedings required for the determination of compensation in such cases were part of or separate from due legal process. He raised the question whether the 61 days' sentence handed down to a prison guard, reported in paragraph 8 of the written replies to the list of issues (CCPR/C/CHL/Q/5/Add.1), was final or subject to appeal. Lastly, he expressed concern about the power of judges to hold prisoners in incommunicado detention for up to 10 days.

9. **Mr. Sanchez-Cerro** asked whether Amnesty Decree-Law No. 2191 continued to be enforced, and whether civilians could be tried by military courts. He

referred to the decision reached by the Inter-American Court of Human Rights in the *Almonacid Arellano y otros vs. Chile* case, where it had found that the decree-law was incompatible with human rights law. The Committee would like to know whether that case was still continuing to be investigated and whether the culprits had been identified and brought to justice.

10. **Ms. Chanet** emphasized the vagueness of many of the delegation's replies, which had referred to legislative bills or even to preliminary draft laws. While the Committee encouraged States parties to bring in new legislation in accordance with the Covenant, it could only take account of positive law. She noted that the legislative process seemed to be very drawn-out in Chile and asked how the institutional process of adoption of a bill on the matrimonial regime could have been blocked for 12 years.

11. **The Chairperson** invited the delegation to respond to any of the additional questions and concerns raised by the Committee.

12. **Mr. Riveros** (Chile), in reply to the question put by Sir Nigel Rodley, said that the two National Commissions referred to were not courts of law and were therefore not required to determine responsibilities.

13. **Mr. Quintana** (Chile) said that the purpose of the Torture Commission was indeed to identify victims with a view to reparation. The judicial investigation of cases of torture was part of a broader process regarding which more specific information would soon be provided to the Committee.

14. **Mr. González** (Chile), taking up the question concerning the prison guard sentenced to 61 days' imprisonment, said that the sentence did not admit of appeal and that the guard had, in addition, been relieved of his duties. Proceedings against perpetrators took the form of civil suits rather than penal suits; they could not be instituted against the State.

15. **Mr. Riveros** (Chile) reported that information had been received to the effect that the Supreme Court of Chile had reaffirmed the non-application of Amnesty Decree-Law No. 2191.

16. **Mr. Quintana** (Chile) said that it had not previously been possible to revoke that decree-law but that since the constitutional reform of 2005 new possibilities existed that were being explored. New penal procedures had also been put in place, under which no one could be detained for more than 14 hours before being brought before a court; following judicial review, judges could order pretrial detention, but not incommunicado detention. The remedy of protection (*amparo*) was available. As for the blocked bill to which Ms. Chanet had referred, the stalemate in Congress was due to confusion about successive matrimonial regimes in force in Chile. Supplementary regimes were currently being discussed.

17. **Mr. Riveros** (Chile), addressing the question of military justice, said that changes were envisaged that would in future prevent military courts from dealing with cases not involving military personnel.

18. **The Chairperson** invited the delegation to address questions 12-22 of the list of issues (CCPR/C/CHL/Q/5).

19. **Mr. Riveros** (Chile) said that since 2000 the Government had been taking steps to improve prison accommodation conditions through a Prison Infrastructure Concession Programme based on private-public partnerships. The sum of $294 million had thus been invested in the construction of 10 new prison facilities. He referred the Committee to the written replies to the list of issues (CCPR/C/CHL/Q/5/Add.1), which provided in tabular form fuller information about the progress achieved. A number of mechanisms had been introduced for the regular supervision of prison conditions. Judges from all the courts were required to pay weekly visits to prisons to check on the health, hygiene and safety of inmates. The Supreme Court also appointed judges to pay additional supervisory visits to prison if deemed necessary. In 2002 information offices had been established to receive and follow up complaints and proposals from prisoners regarding their conditions of detention. Those offices operated in accordance with a handbook of procedure and came under the Chilean Prisons Department, which required its staff to cooperate fully with the judiciary.

20. Turning to question 14, he said that the jurisdiction of military courts was too broad; journalists, for example, had been prosecuted in military courts. His Government intended to draft legislation that would narrow the jurisdiction of military courts to cover only offences under the Code of Military Justice and exclude civilians from the scope of military jurisdiction, thereby bringing Chilean

legislation into conformity with international standards.

21. With regard to the legal capacity of juveniles (question 15), he said the entry into force of the Juvenile Criminal Responsibility Act, which eliminated the discernment procedure and established a special criminal procedure for offences committed by youths aged between 16 and 18, had, for technical reasons, been postponed until June 2007. The bill approving that postponement also established a committee of experts to assess the implementation of the law and report quarterly to the corresponding congressional committees.

22. In response to question 16, he said that each successive Concertation of Parties for Democracy (CPD) Government had attempted electoral reform, but had been unable to obtain the agreement of the opposition. The recent constitutional reforms of August 2005 had made headway towards the elimination of appointed senators and senators for life and the removal from the Constitution of the electoral system, which had been made the subject of a special law requiring the support of three fifths of deputies and senators. The choice of a binominal rather than proportional electoral system in 1980 had been intended to ensure stable majorities. Currently the Chamber of Deputies had 120 deputies, two from each of 60 districts. Two senators were likewise elected from each senatorial district. The two candidates on any one list were declared elected as deputies or senators if their list received more than double the number of votes of the list placing second. If no list received double the votes of the second list, however, the two lists receiving the highest number of votes each won a seat, and declared elected the candidate from their list who had received the most votes.

23. The binominal system was controversial. It produced unequal representation in that a seat could be won with only 33 per cent of the vote even if the majority list had received 66 per cent, and at times parliamentarians were elected with fewer votes than a rival candidate. Significant minorities that had not won 33 per cent of the votes were left out, the exclusion of third parties strengthened the major blocs and independent candidates could not be elected. The system also created tensions within the political blocs as the candidate with the most votes within each coalition was elected, penalizing weaker members and leading to intense negotiations over lists of candidates. The system also tended to lead to both lists electing one candidate per district. He stressed that his Government was committed to electoral reform, including greater proportional representation.

24. Turning to the issue of discrimination (question 17), he said a bill to combat discrimination was currently before the Senate. The bill provided for the prevention and elimination of all forms of discrimination and underscored the State's obligation to develop policies and take action to prevent discrimination and ensure the full enjoyment of human rights by all. It defined discrimination as any arbitrary distinction, whether by act or omission, and established a complaints procedure for victims. It also made discrimination an aggravating factor in any offence.

25. The indigenous population continued to be disadvantaged (question 18), although the proportion of indigenous people living in poverty had dropped from 32.3 per cent in 2000 to 28.7 per cent in 2003, a figure still 10.6 per cent higher than for the non-indigenous population. Until the 1980s there had been marked social and economic discrimination against the indigenous peoples, seriously affecting their social, cultural and economic development. Currently, however, the indigenous population received approximately 10 per cent more in State benefits than the population overall, and the positive discrimination policies implemented under the 1993 Indigenous Peoples Act had been translated into numerous plans and programmes, including land purchases, student grants and bilingual and intercultural education and health programmes.

26. Constitutional recognition of indigenous peoples (question 19) had been an objective of CPD Governments for over 15 years, but no progress had been made because there continued to be significant opposition to the use of the term "indigenous peoples". There was also opposition to ratification of International Labour Organization (ILO) Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries. Nevertheless, the rights of the indigenous peoples were protected pursuant to the Indigenous Peoples Act. Mechanisms had been established to recognize indigenous land rights and return lands to indigenous communities, promote indigenous culture and language and preserve Chile's indigenous heritage. Indigenous peoples had the right to use their indigenous names in the civil register and to receive an inter-cultural education.

27. Broadening the scope of Act No. 19,253 to cover "ancient" lands (question 20) was not currently envisaged. Indigenous property owners had the same rights as any property owner, except the right to transfer ownership to non-indigenous persons; underground resources belonged to the State. The Indigenous Peoples Act of 1993 had addressed the main indigenous claims at that time. In order to respond to current concerns (question 21) a National Debate of Chilean Indigenous Peoples had been undertaken in 2006 with a view to evaluating current policies, improving the political participation and representation of indigenous peoples, ratifying ILO Convention No. 169, establishing public institutions to deal with indigenous issues and ensuring the sustainable development of the indigenous population. His Government was committed to addressing the concerns of the indigenous communities through its "new deal" policy, with a view to creating public institutions and programmes that reflected the cultural diversity of the country and established a new relationship between citizens and the State based on respect for human rights.

28. Finally, he recalled that although the Covenant had been signed by Chile in 1969, and ratified in 1972, it had not been published or applied by the courts until the 1980s. He reiterated his Government's commitment to dissemination of information about the Covenant (question 22), which was a fundamental instrument for the protection and promotion of human rights.

29. **Sir Nigel Rodley** reiterated his request for further information on the use of incommunicado detention. While he welcomed the new mechanisms for ad hoc inspections of prison conditions, inter alia by Supreme Court judges or persons designated by them, he wondered whether there were any statistics on how frequently such visits occurred and on concrete examples of such inspections having led to follow-up action and an improvement in conditions. He also asked if a similar mechanism existed for detainees in police custody and whether detainees were returned to police custody after their first appearance before a judge.

30. He acknowledged the State party's efforts to reduce overcrowding in prisons by building new prisons and using alternatives to incarceration but asked for more information on the incarceration rate among the population and on the capacity of the prison system following both the building of new prisons and the refurbishment or closing of existing prisons. He cautioned however that building new prisons alone would not solve the problem of overcrowding; other approaches such as the use of alternative sentences must also be envisaged. Finally, he took note of the delegation's explanation of the binominal electoral system and the paralysis that could result as vested interests protected their advantages, although the change to requiring only a three-fifths majority of deputies and senators for modifying the electoral system was a step forward.

31. **Mr. Johnson** stressed the urgency of restricting the jurisdiction of the military courts in order to avoid impunity for human rights violators, and noted that trying civilians before a military court was a violation of the Covenant. Allegations of the use of torture and excessive force by the police and the security forces persisted, and he called for the establishment of an independent mechanism to investigate such abuses of power. The protections provided to the indigenous peoples under the 1993 Indigenous Peoples Act were likewise not in conformity with current international norms and the State party had not done enough to defend the interests of the Mapuche people, including their land rights. Promotion of the forestry and tourism sectors, in particular, had had a negative effect on the environment in general as well as on the traditional resources of the Mapuche.

32. With regard to article 26 of the Covenant (non-discrimination), he drew attention to the case of Ms. Karen Atala, a judge and the biological mother of three girls, who had separated from her husband and now lived with her same-sex partner. The lower courts had awarded her custody of the girls but, following an appeal lodged by her ex-husband, the Supreme Court had overruled the initial decision and awarded custody to the latter on the ground that Ms. Atala's lesbian relationship might be detrimental to her daughters' psychological development. He would be grateful to hear the State party's views on the matter.

33. Referring to the issue of trade unions, he pointed out that collective bargaining could only be carried out on a voluntary basis and with the consent of the employer concerned. While recent amendments to the Labour Code had facilitated collective bargaining in the agricultural sector, strikes were still prohibited at harvest time, and civil servants were prohibited from striking altogether. In 2004, Congress had established a committee on workers' rights with a view to

monitoring the implementation of Act No. 19,759 and addressing shortcomings, including unlawful subcontracting practices, excessive delays affecting cases brought before employment tribunals and the high cost of mounting such cases. He enquired as to the measures taken or envisaged to resolve those difficulties.

34. **Mr. Bhagwati** recalled that, in its concluding observations on the fourth periodic report of Chile, the Committee had expressed concern about the high incidence of sexual harassment in the workplace, and had recommended the enactment of legislation designed to render such harassment an offence punishable by law. He wished to know whether any measures had been taken to that end. In those same observations, the Committee had also recommended that the State party should take steps to improve the participation of women in the judiciary, including through affirmative action programmes if necessary; he enquired as to the progress made in that regard. He further asked about the role and composition of the Judicial Academy, and whether enrolment was compulsory for all judges.

35. He would like to hear more about the recent reform of the Code of Criminal Procedure. What were the defining features of that reform, and how long would it take to dispose of all the cases awaiting processing under the old Code? He wished to know whether legal aid was widely available in Chile and whether the legal aid programme had been established by law or in implementation of an order from the executive branch. According to paragraph 224 of the report, a new bill on legal aid was pending; he was curious to know when that bill would pass into law. The State party should also provide information on the composition and functioning of its new family courts.

36. Lastly, referring to article 19 of the Covenant, he noted that the right to receive information was not safeguarded in Chile. In that connection, he wondered why the Government had entered reservations to the application of the provisions of the Covenant to events that had taken place before March 1990.

37. **Mr. Shearer** said that two recent reports on prison conditions in Chile had revealed serious human rights violations. He enquired as to the measures taken or envisaged to rectify the situation. He was particularly concerned about female prisoners, who were often detained in the same facilities as men. He was also troubled by the tables on pages 16 to 22 of the State party's written replies (CCPR/C/CHL/Q/5/Add.1), which suggested that homosexual, HIV-positive and insane prisoners were all housed together in so-called "special sections".

38. According to paragraph 249 of the report, a legislative proposal to include conscientious objection as one of the grounds for exemption from compulsory military service had been rejected by Congress. He enquired as to the reasons for that decision, and wondered whether the Chilean Government had considered offering conscientious objectors the opportunity to carry out community, rather than military, service.

39. **Mr. O'Flaherty** asked whether there were any plans to reintroduce the legislative proposal referred to by Mr. Shearer. Had the State party considered reforming the military service regime in order to eliminate its punitive nature and to allow for conscientious objectors to be exempted from service after enlistment?

40. While he appreciated the response to question 19 of the list of issues, he wished to stress the importance of granting constitutional recognition to indigenous peoples and the utility, in that connection, of acceding to ILO Convention No. 169. The Chilean Government's failure to recognize the rights of indigenous peoples, especially the Mapuche, to certain "ancient" lands only served to exacerbate existing social tensions. He would be grateful to hear the State party's reaction to the recommendation of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people to the effect that access by indigenous communities to the water and maritime resources on which they had traditionally depended for their survival should take precedence over private commercial and economic interests. What, if any, measures had been taken to implement that recommendation?

41. **Mr. Amor**, referring to the right to vote (article 25 (b) of the Covenant), enquired whether Chilean citizens wishing to vote had to be listed on an electoral register. If so, the State party should describe the registration procedures and any specific exemptions. The voter turnout rate during national elections should also be provided. The Government had indicated its desire to move towards an electoral system based on the principle of proportional

representation, and he wished to know whether that system would operate at the national or the constituency level and whether a binary or a preferential voting system would be used. He wondered whether proportional representation would give greater advantage to minority political movements which might not necessarily be in favour of the promotion of human rights.

42. **Ms. Majodina**, referring to question 12 of the list of issues, requested clarification of arrest procedures. According to her sources, law enforcement officials continued to inflict physical and psychological violence on suspects, especially those from poorer backgrounds, whose disadvantaged social status meant that they were much more likely to engage in criminal activities. In the context of the reform of criminal procedure, she would be grateful for information about the measures taken to eliminate the subculture of police violence.

43. Turning to question 18 of the list of issues, she expressed concern about ongoing discrimination against members of the Mapuche community with regard to land ownership. Several Mapuche families who had submitted complaints to the authorities had been subjected to threats and intimidation, and had received little or no official information regarding the progress of their cases. She requested further information on efforts to ensure that the right of everyone to be recognized everywhere as a person before the law, enshrined in article 16 of the Covenant, was not violated for reasons of ethnic or social origin.

44. **Ms. Motoc** asked the State party to explain how it could support the United Nations Declaration on the Rights of Indigenous Peoples when it had not yet acceded to ILO Convention No. 169, and requested clarification of the Government's reasons for not signing the latter. She would be grateful for additional information on the treatment of indigenous people during judicial proceedings and in prisons. The State party should also give its views on the comments made by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people concerning the recognition of indigenous people's rights within their own communities. Lastly, she enquired as to the measures taken by the Government to ensure that indigenous communities gave free, prior and informed consent to developments on land belonging to them.

45. **Mr. Sanchez-Cerro** said that, while the manifestly unfair binominal electoral system was clearly a legacy of the dictatorship, every attempt to reform that system had failed. He enquired whether the proposals for the reform of the electoral system described in the State party's report had been put forward by the executive branch or by Congress, and also wished to know whether the Government had considered holding a plebiscite, pursuant to article 32 of the Constitution, to resolve the issue.

46. **Ms. Wedgwood** pointed out that, to date, no one had been prosecuted in Chile for acts of torture carried out during the military regime. She was curious to know whether the Government had adopted any administrative measures to secure the retirement of all personnel involved in such practices and whether the regiments concerned had been disbanded. In addition, had steps been taken to examine the lawfulness of Colonia Dignidad? In closing, she said that Chile's successful transition from military dictatorship to democracy should serve as a model for other societies struggling with similar situations.

47. *The meeting was suspended at 12.10 p.m. and resumed at 12.20 p.m.*

48. **The Chairperson** invited the delegation of Chile to respond to the questions put by members of the Committee.

49. **Mr. Riveros** (Chile) said that supplementary written information on a number of issues raised by the Committee would be circulated to all members.

50. **Mr. Salinas** (Chile), referring to the recent reform of criminal procedure, said that the old inquisitorial system had been replaced by an open and public accusatory system. Since 2000, the Public Prosecutor's Office had provided legal aid to more than 15,000 individuals.

51. In response to the question put by Ms. Majodina, he pointed out that suspects could not be detained for more than 24 hours without being brought before a court and that law enforcement officials were required to report arrests to the Public Prosecutor's Office within 12 hours. The Chilean Prisons Department (*Gendarmería*) was responsible for pretrial detention arrangements.

52. While the high rate of imprisonment was cause for concern, efforts were under way to lessen overcrowding by building more prison facilities. Prison conditions

were closely monitored — defence attorneys had made over 16,000 visits to prisons in northern metropolitan areas in 2006 — and programmes had been introduced with a view to ensuring the effective reintegration of former offenders into society.

53. **Mr. Quintana** (Chile), responding to Sir Nigel Rodley's request for clarification, said that under the previous criminal procedure system, detainees could be held incommunicado indefinitely. The new Code of Criminal Procedure, established in 2000, provided for "restriction of communication", a term that Chile preferred to "incommunicado" in order to avoid confusion with the former system. The new Code stated that such restriction could not exceed 10 days or apply to a detainee's relationship with his or her lawyer; furthermore, the accused could request that the decision be reviewed at any time.

54. **Mr. Tagle** (Chile), referring to the case of Ms. Atala, who had lost custody of her children to her former husband due to her sexual orientation, said that she had decided to appeal against the decision to the Inter-American Court of Human Rights, on grounds of discrimination. The case had entered a negotiations phase within the framework of the procedure set out by the Inter-American Commission on Human Rights but, for reasons of confidentiality, no more details could be provided for the time being. He expressed the hope that the Court would decide the case in the mother's favour, in a timely manner.

55. **Mr. Rendón** (Chile), referring to Mr. Bhagwati's remarks, said that previous definitions of sexual abuse dated back to 1998, when it had not been classified as a criminal offence. As of 2004, sexual abuse in the workplace — including coercion and sexual abuse by a person in a position of authority — had become a criminal offence. According to the National Service for Women, many cases constituted sexual abuse and were therefore subject to intervention by the Service. On the subject of the participation of women in the judiciary, their representation currently stood at 12 per cent in the Supreme Court, 33 per cent in the appeals courts and 60 per cent in the trial courts; the number of women in the higher courts was thus continuing its upward trend. The affirmative action initiative introduced by the President to ensure an equal distribution of posts between the sexes had been applied at the executive level but not yet at the judiciary level. The Judicial Academy had been established by law and received budgetary support. Access to judgeships required completion of training at the Academy and only when there were no available graduates from the Academy could non-graduates become judges; in that case, they were nonetheless required to take preparatory courses. Family law had undergone a transformation in the Chilean system: whereas in 2004, there had been just 41 trials involving minors, in 2006, a total of 60 family-related trials had taken place. Furthermore, 251 additional judges had been recruited and an interdisciplinary team including 40 psychologists had been established. The Government had tripled its investment in the area of family law, not counting support for infrastructure, and was currently considering an increase in judgeships.

56. **Ms. Soto** (Chile), responding to questions about the indigenous populations in Chile, said that the Government, based on the findings of the Historical Truth and New Deal Commission and the recommendations of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, had introduced a new policy on indigenous peoples, which expanded recognition of their rights. While the Government did not consider the 1993 Indigenous Peoples Act obsolete, it recognized its limitations and had made ratification of ILO Convention No. 169 a priority. The President of Chile had recently promoted discussion of topics related to the Convention and had made efforts to sensitize society to its contents, recognizing that its ratification was not only important for indigenous peoples, but for Chilean society as a whole. The Convention had subsequently been submitted to Congress for ratification.

57. It was important to note that since the advent of democratic governments in the 1990s, no land had been taken away from indigenous peoples and no complaint had been made to that effect; nonetheless, seizures of land had occurred in the past and the Government had established various mechanisms through the Indigenous Peoples Act to restore that land to its original owners. Ancestral lands, however, were not registered and were therefore not covered by those mechanisms. Together with the Ministry of National Assets and the National Indigenous Development Corporation (CONADI), the Government had made significant efforts towards the regularization of land titles for unregistered land and the transfer of State land holdings: to date, some 500,000 hectares had been transferred to indigenous communities, including

150,000 hectares to the Mapuche alone. The recent conflict between the indigenous communities and the Government had arisen from the delays in the direct purchase of land for transfer to those communities, whether individually or collectively; in that connection, the institutions in charge of the purchasing had suffered from a small budget. Pressure from the communities to have their rights rapidly enforced in order to ensure ownership of their land had thus resulted in extremely tense relations. Since then, however, the situation had improved and the institutional mechanisms had been streamlined to ensure the transfer of land: US$ 31 million had been set aside in the 2007 budget for the purchase of land by Mapuche communities. The land was tax-exempt, benefited from all commonly recognized property rights and could be held collectively if the community so decided.

58. Regarding access to water resources, the Indigenous Peoples Act provided for a water fund, set up for the purpose of purchasing water resources and irrigation land for indigenous communities. To date, 17,000 hectares of irrigated land had been transferred to indigenous communities; their water rights had also been recognized. Specifically in northern Chile, the Government had helped communities to purchase bodies of water or to buy them back from their current owners. Ancestral waters had also been recognized by the courts and their restitution to indigenous communities had been provided for. In 2006, the Government had drawn up a bill with the participation of indigenous communities living along the coast, recognizing their preferential access to coastal waters. The bill had been adopted unanimously by the Chamber of Deputies, and was currently before the Senate; it was hoped that it would be enacted into law by the end of the year. Chilean law, including the Indigenous Peoples Act, provided for the necessary consultation of indigenous populations with regard to investment projects affecting areas surrounding their land. Mechanisms for ensuring that took place had to be improved, but steps were already being taken to do so.

59. Referring to indigenous persons who had been deprived of their liberty, he said that the Public Prosecutor's Office had established a special branch in the ninth region to ensure the appropriate treatment of such persons. In addition, the criminal procedure reform law provided for translation services for indigenous detainees and the *Gendarmería* was receiving special training to ensure respect for indigenous peoples' cultural rights. The police had also made efforts in that area, through an agreement signed with CONADI for the provision of information on customs of which the police should be aware before entering an indigenous community.

60. **Mr. Riveros** (Chile), referring to labour issues, said that although the small number of trade unions in Chile was a source of concern, unions and collective bargaining were indeed provided for by the Chilean Labour Code and that efforts were being made to improve the current situation. Although collective bargaining was not legally recognized in the public sector, a lengthy negotiation process involving the civil servants' association Agrupación Nacional de Empleados Fiscales and the Ministry of Finance had recently achieved a very positive outcome with regard to the organization of civil servants. It was important to distinguish between a "stoppage" and a "strike": the former was a situation falling outside the framework of legal norms, whereas the latter was a process provided for under the collective bargaining provisions of the Labour Code.

61. Referring to Mr. Johnson's remarks concerning subcontracting, a law on the subject had come into force: one of its key elements was the principle of solidarity between contractor and subcontractor, thus ensuring the protection of workers' rights. It was the responsibility of the contractor, not of the subcontractor, to guarantee workers' rights in such areas as conditions of employment, social security and health and safety in the workplace. A legal distinction was made between subcontracting and the supply of workers.

62. **Mr. González** (Chile), referring to questions about prisons, said that one judge's visit to a Santiago prison had led the authorities to accelerate construction work with a view to providing capacity for an additional 2,500 inmates — a demonstration of the effective follow-up action to judicial visits. There were currently around 40,000 detainees in closed prison regimes in a country of 15.5 million inhabitants. The Government was also exploring alternatives to incarceration: there was a law providing for night-time deprivation of liberty and reduction of sentences, but given the limited nature of those measures, the Ministry of Justice would be submitting a new bill by the end of the year for further measures and

improvement of mechanisms for follow-up to prison visits.

63. **Ms. Brunaud** (Chile) said that the question of conscientious objection was addressed in a bill on alternatives to military service, which was currently in its first reading in the Chilean Congress.

64. **Mr. Riveros** (Chile) said that his delegation would be providing the Committee with further information in written form regarding all pending questions. He thanked the Committee and said he hoped it had noted the current Government's emphasis on the restoration of democracy and the importance of human rights in Chile.

65. **The Chairperson** commended the delegation on the quality and quantity of the information provided, and urged it to submit its next report in a timely manner so as to allow the Committee to address all issues adequately. He welcomed the major legislative effort made by Chile, but stressed that the Committee was concerned more by the implementation of, and results achieved by, measures in correcting human rights violations than by the intentions behind them. He recognized that there were major political obstacles to the rapid adoption of a number of legal instruments, and encouraged Chile to continue its efforts in that respect. While the non-application of Amnesty Decree-Law No. 2191 was a major step forward, the fact that it was still in force gave cause for concern, especially in the event of a future change in power. Restrictions on abortion were also a problem, since as long as abortion was considered a crime, it ran the risk of being in contradiction with article 6 of the Covenant. Finally, in countries where the separation of powers was established in the Constitution, it was unacceptable for the executive branch of a government to attempt to evade its responsibilities by invoking the independence of the judiciary with respect to the Covenant; the State as a whole, however it was organized, was responsible for satisfying the conditions of the Covenant. He looked forward to receiving additional information from the delegation, including with regard to the treatment of indigenous populations and gender equality in the context of marriage. Improvements were required in both areas, despite the commendable reforms made.

The meeting rose at 1.10 p.m.